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JAN 20 2006

OFFICE OF PETITIONS

In re Application of	:	
Brian K. McMillin, et al.	:	
Application No. 10/696,628	:	DECISION GRANTING PETITION
Filed: October 28, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. LAM2P431	:	

This is a decision on the petition, filed November 3, 2005, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on October 20, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The petition is found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

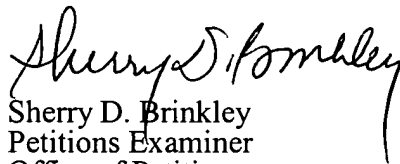
The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of April 27, 2006 accompanies this decision on petition.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on September 15, 2005. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. In view of the rescinding of the nonpublication request, the \$300 publication fee is due. Accordingly, a Notice of Publication Fee Due has been included with this decision.

Petitioner should note that payment of the publication fee is required to be filed within the period set forth in the Notice to avoid abandonment of the application.

This application is being forwarded to Publishing Division to await a reply to the above mentioned Notice of Publication Fee Due.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENTS:

- (1) Notice Regarding Rescission of Nonpublication Request
- (2) Notice Of Publication Fee Due